IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Bail Appl..No. 4941 of 2007()

CRIME NO.255/07 OF THE MANNUTHY POLICE STATION

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PETITIONER/3RD ACCUSED

SEBASTIAN K.J., PASTOR, KANDATHIL
HOUSE, AYYAPPANKAVU P.O., MULAYAM,
THRISSUR.

BY ADV. SRI.DILIP J. AKKARA
SRI.B.K.PURUSHOTHAMAN
SRI.AYPE JOSEPH

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/08/2007 ALONG WITH BA NO. 4949 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos. 4941 & 4949 OF 2007

Dated this the 17th day of August, 2007

ORDER

Applications for anticipatory bail. The petitioners herein are accused 2 and 3 in a crime registered, inter alia, under Sec.468 of the IPC. Altogether, there are six accused persons. The de facto complainant – a woman, complained that a false document has been created in her name whereunder she is shown to have conveyed her title over an item of property to the 3rd accused. It is her further allegation that this crime was committed by accused 1 to 3 in collusion with the other accused. Accused No.1 is her brother. Accused No.2 is the wife of the brother. Accused No.3 is the transferee.

2. Accused 2 and 3 have filed these petitions. Their counsel contend that they are absolutely innocent. The learned counsel for the 2nd accused – sister-in-law, contends that it is a wild speculation by the de facto complainant that it

is she who has executed the document. The 3rd accused contends that he is a bona fide purchaser for value from the executant of the document about whose identity he is not certain. He had no reason whatsoever to suspect that the 1st accused through whom the deal was finalised was putting up a fictitious person to sign as a de facto complainant. The 2nd accused asserts that it was not she who executed the document.

3. These applications are opposed by the learned Public Prosecutor. But called upon to point out any specific indication to suggest that the 3rd accused really knew the de facto complainant and that whoever executed the document was not really the de facto complainant, the learned Public Prosecutor submits that, at the moment, there is no satisfactory materials collected in support of that allegation. Investigation is going on. As regards the 2nd accused, the learned Public Prosecutor submits that no witness has so far been traced who has asserted that it was the 2nd accused who impersonated as the de facto complainant and signed the document. The learned Public Prosecutor submits that the thumb impression of the 2nd accused has to be taken. That has to be compared with the thumb impression in the document executed. That will give telltale and unimpeachable material about the identify of the person who had

executed the document. The 2nd accused has to be questioned. Her thumb impression has to be taken. It has to be sent to the expert. Only when the report of the expert comes, can one conclude for certain the culpable responsibility of the 2nd accused for execution of the document, he submits.

4. I have considered all the relevant inputs. In the circumstances referred above, I am satisfied that anticipatory bail can be granted to both 2nd and 3rd accused. Anticipatory bail granted to the 2nd accused can be limited by time. That shall hold the field until the report of the expert is received and notice is given to the 2nd accused by the Investigating Officer of the intention if any to arrest her. She can be reasonable time thereafter to surrender before the learned Magistrate and seek regular bail.

5. In the result, B.A.No.4949/07 is allowed. Following directions are issued in favour of the 2nd accused:

(i) She shall make herself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 24/8/07 and 25/8/07. During this period, it shall be open to the Investigating Officer to interrogate her in custody and take necessary steps to obtain her specimen handwriting and thumb impressions.

(ii) If the petitioner/2nd accused were arrested before receiving the report of the expert, she shall be released on condition that she executes a bond for Rs.25,000/- with two sureties each for the like sum by the officer effecting the arrest.

(iii) These directions shall remain in force until the report of the expert is received and for a period of 10 days thereafter. On getting the report, if the petitioner is required to be arrested, the Investigating Officer shall give her notice. It shall be open to the petitioner, within a period of 10 days from the date of receipt of such notice, to appear before the learned Magistrate and seek regular bail.

6. B.A.No.4941/07 is allowed. Following directions are issued under Sec.438 of the Cr.P.C. in favour of the petitioner/3rd accused:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 24/8/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for

interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 25/807 and 26/8/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 24/8/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 24/8/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge